

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ANDI KRAJA,

Plaintiff,

vs.

BELLAGIO, LLC, et al.,

Defendants.

Case No. 2:15-cv-01983-APG-NJK

ORDER

(Docket Nos. 115, 116, 117)

Pending before the Court is Plaintiff's motion to strike Defendants' motions at Docket Nos. 112 and 113, filed on an emergency basis. Docket No. 115. Also pending before the Court are Plaintiff's motion to reopen discovery and motion for extension of briefing deadlines, filed on an emergency basis. Docket Nos. 116, 117.

"The filing of emergency motions is disfavored because of the numerous problems they create for the opposing party and the court resolving them." *Cardoza v. Bloomin' Brands, Inc.*, 141 F. Supp. 3d 1137, 1140 (D. Nev. 2015) (citing *In re Intermagnetics America, Inc.*, 101 B.R. 191, 193-194 (C.D. Cal. 1989)). "Safeguards that have evolved over many decades are built into the Federal Rules of Civil Procedure and the Local Rules of this court." *Mission Power Eng'g Co. v. Continental Cas. Co.*, 883 F. Supp. 488, 491 (C.D. Cal. 1995). A request to bypass the default procedures through the filing of an emergency motion impedes the adversarial process, disrupts the schedules of the Court and opposing counsel, and creates an opportunity for bad faith gamesmanship. *Cardoza*, 141 F. Supp. 3d at 1140-41.

1 As a result, the Court allows motions to proceed on an emergency basis in only very limited
2 circumstances. *See, e.g.*, Local Rule 7-4(b) (“Emergency motions should be rare”).

3 Emergency motions must as a threshold matter meet several technical requirements outlined in
4 the local rules. First, the face of the motion itself must be entitled an “Emergency Motion” so the Court
5 has prompt notice that expedited relief is being requested. Local Rule 7-4(a). Second, the emergency
6 motion must be accompanied by an affidavit providing several key facts necessary for the Court to
7 determine whether, in fact, an emergency exists and allowing the Court to provide the fairest, most
8 efficient resolution. *Id.* This affidavit must include a detailed description of the nature of the
9 emergency. *See id.* The affidavit must also provide the contact information (telephone number and
10 office addresses) of the movant and all other affected parties. *See id.* The affidavit must also provide
11 a certification that, despite personal consultation and sincere effort to do so, the movant was unable to
12 resolve the matter without court action. *See, e.g.*, Local Rule 7-4(a)(3). If the circumstances are such
13 that personal consultation is truly not possible, the movant must provide a detailed explanation why that
14 is the case so the Court can evaluate whether to exercise its discretion to decide the motion despite the
15 lack of a proper pre-filing conference. *See id.* Similarly, if no notice whatsoever was provided to the
16 opposing party regarding the filing of the motion, the affidavit must include a detailed explanation of
17 why it was not practicable to provide that notice. *See id.* Concurrently with the filing of an emergency
18 motion, or promptly thereafter, the movant must inform the courtroom administrators of the assigned
19 judges that the motion was filed. Local Rule 7-4(d).

20 If these technical requirements are not met, the emergency motion may be denied. Local Rule
21 7-4(b). If these technical requirements are met, the Court will turn to the substantive requirements for
22 filing an emergency motion. When a party files a motion on an emergency basis, it is within the sole
23 discretion of the Court to determine whether any such matter is, in fact, an emergency. Local Rule 7-
24 4(c). Generally speaking, an emergency motion is properly presented to the Court only when the movant
25 has shown (1) that it will be irreparably prejudiced if the Court resolves the motion pursuant to the
26 normal briefing schedule and (2) that the movant is without fault in creating the crisis that requires
27 emergency relief or, at the very least, that the crisis occurred because of excusable neglect. *Cardoza*,
28 141 F. Supp. 3d at 1142 (citing *Mission Power*, 883 F. Supp. at 492). If there is no irreparable prejudice,

sufficient justification for bypassing the default briefing schedule does not exist and the motion may be properly decided on a non-expedited basis. *Cardoza*, 141 F. Supp. 3d at 1142-43. If there is irreparable prejudice but the movant created the crisis, the Court may simply deny the relief sought. *Id.* at 1143. The relevant inquiry is not whether the opposing party was at fault with respect to the underlying dispute, but rather “it is the creation of the crisis—the necessity for bypassing regular motion procedures—that requires explanation.” *Mission Power*, 883 F. Supp. at 493. For example, when an attorney knows of the existence of a dispute and unreasonably delays in bringing that dispute to the Court’s attention until the eleventh hour, the attorney has created the emergency situation and the request for relief may be denied outright. *See Cardoza*, 141 F. Supp. 3d at 1143 (collecting cases). Quite simply, emergency motions “are not intended to save the day for parties who have failed to present requests when they should have.” *Intermagetics America*, 101 B.R. at 193; *see also* Local Rule 7-4(b) (“[The] failure to effectively manage deadlines, discovery, trial, or any other aspect of litigation does not constitute an emergency”).

The Court declines to grant emergency treatment to these motions, but will expedite briefing. Accordingly,

IT IS ORDERED that a response shall be filed to the motions at Docket Nos. 115 and 116 no later than March 3, 2017. Any reply to the responses to those motions shall be filed no later than March 7, 2017.

IT IS FURTHER ORDERED that Plaintiff’s motion for extension of briefing deadlines is GRANTED. Plaintiff’s response to Defendants’ motions at Docket Nos. 112 and 113 shall be filed no later than March 17, 2017. Any reply to Plaintiff’s response shall be filed no later than March 24, 2017.

IT IS SO ORDERED.

DATED: February 24, 2017.


NANCY J. KOPPE
United States Magistrate Judge